

FILED

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MARYLAND
(Baltimore Division)

FEB 19 2001

CLERK'S OFFICE
U. S. BANKRUPTCY COURT
DISTRICT OF MARYLAND
BALTIMORE

In re:

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FRANK'S NURSERY & CRAFTS,
INC., *et al.*,

*

Case No: 01-52415-JS THRU 01-52416-JS
(Chapter 11)

Debtor.

*

(Jointly Administered)

* * * * *

**DEBTORS' APPLICATION FOR AUTHORITY TO EMPLOY
WHITEFORD, TAYLOR & PRESTON L.L.P. AS ATTORNEYS
FOR DEBTORS AND DEBTORS IN POSSESSION**

Frank's Nursery & Crafts, Inc. ("Frank's") and FNC Holdings, Inc. ("FNC"), the above-captioned debtors and debtors in possession herein (collectively, the "Debtors"), by counsel, file this application for authority to employ Whiteford, Taylor & Preston L.L.P. ("WT&P") as their attorneys, and state as follows:

Jurisdiction

1. This Court has jurisdiction over this Application pursuant to 28 U.S.C. §§ 157 and 1334. Venue lies properly in this Court pursuant to 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding pursuant to 28 U.S.C. § 157.

2. The relief sought with this Motion is based upon 11 U.S.C. § 327(a), as modified by 11 U.S.C. § 1107, and upon Rules 9006 and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules").

The Chapter 11 Reorganization Proceedings

3. On the date hereof (the "Petition Date"), Frank's and FNC each filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the "Bankruptcy Code"). The Debtors intend to continue in the possession of their

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respective properties and the management of their respective businesses as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

4. By application submitted to the Court concurrently herewith, the Debtors have requested entry of an order of this Court authorizing the procedural consolidation and joint administration of these cases.

The Debtors and Their Business Operations

5. Frank's, founded in 1949, operates the largest United States chain (as measured by sales) of specialty retail stores devoted to the sales of lawn and garden products. Lawn and garden products include green and flowering plants for outdoor and indoor usage, live landscape products such as trees and shrubs, fertilizers, seeds, bulbs, gardening tools and accessories, planters, watering equipment, garden statuary and furniture, wild bird food and feeders, mulches and specialty soils. Frank's also is a leading retailer of Christmas Trim-A-Tree merchandise, artificial flowers and arrangements, garden and floral crafts, and home decorative products. FNC (formerly known as General Host Corporation) is the sole shareholder of Frank's.

6. As of February 9, 2001, Frank's operated 217 retail stores in 15 states, primarily in the Mid-Atlantic, Midwest and Northeast. At that time, an additional 44 stores were being closed as part of a previously announced plan to sell under-performing store locations. In its fiscal year ending January 28, 2001, Frank's had sales of approximately \$435 million. Currently, the Debtors employ approximately 1,900 full-time and 5,000 part-time employees. As of November 5, 2000, the Debtors had total assets of approximately \$471.9 million and total debt of approximately \$338 million.

7. The Debtors' sales are seasonal. The lawn and garden revenues are concentrated principally in the Spring and, to a lesser extent, in the Fall. The Trim-A-Tree sales occur between Thanksgiving and Christmas.

8. During most of the first half of 2000, weather patterns negatively impacted lawn and garden product sales across the Debtors' principal markets. During the third quarter of 2000, the Debtors decided to close 44 under-performing stores, liquidate their inventories, and sell the closed stores owned by the Debtors. Later in 2000 it became apparent that the Debtors' Trim-A-Tree holiday season sales were below expectations, which was consistent with the general softness in sales at retailers during this period.

9. In 2001, notwithstanding excess borrowing availability under their existing bank credit facilities, the Debtors were unable to draw down sufficient funding to meet the Debtors' working capital needs. Also, in the relatively short period since access to their credit facilities had been curtailed, the Debtors were unable to secure additional funding to meet those working capital needs. Ultimately, the Debtors determined the most appropriate method to obtain such financing and achieve their restructuring objectives was through chapter 11 filings.

The Need for Legal Services

10. The Debtors require the assistance of counsel in order to pursue a successful reorganization of their debts and to assist the Debtors with the performance of their duties as debtors and debtors in possession herein. The Debtors also require counsel to, among other things, assist them in fulfilling their duties under State and Federal laws, advise them on the legal aspects of contracts, leases, financings, and other business matters, defend the Debtors in litigation and to prosecute litigation on their behalf. In short, the Debtors require the full range

of traditional business legal services as well as legal services unique to a bankruptcy reorganization proceeding.

11. The Debtors have selected WT&P to represent them as debtors and debtors in possession in these cases because WT&P has considerable experience in insolvency and bankruptcy matters, including representation of debtors in large chapter 11 cases. The Debtors have also selected WT&P because they believe WT&P is well qualified to represent the Debtors as debtors and debtors in possession.

The Employment of WT&P as Co-Counsel to the Debtors

12. The Debtors seek to employ WT&P as their co-counsel with Willkie Farr & Gallagher. The Debtors' management has directed WT&P and Willkie Farr & Gallagher to exercise their best efforts in coordinating their services on behalf of the Debtors in order to avoid unnecessary duplication of effort and unnecessary expense to the Debtors' estates.

The Services to be Rendered

13. The Debtors have retained WT&P to assist them with, among other things, the preparation of their bankruptcy petitions and all related documents and pleadings and, subject to approval from this Court, with the prosecution of these chapter 11 cases.

14. The professional services that the Debtors may request WT&P to render include:

a. providing the Debtors legal advice with respect to their powers and duties as a debtor in possession and in the operation of their business and management of their property;

b. representing the Debtors in defense of any proceedings instituted to reclaim property or to obtain relief from the automatic stay under § 362(a) of the Code;

c. representing the Debtors in any proceedings instituted with respect to the Debtors' use of cash collateral;

d. preparing any necessary applications, answers, orders, reports and other legal papers, and appearing on the Debtors' behalf in proceedings instituted by or against the Debtor;

e. assisting the Debtors in the preparation of schedules, statements of financial affairs, and any amendments thereto which the Debtors may be required to file in these cases;

f. assisting the Debtors in the preparation of a plan of reorganization and a disclosure statement;

g. assisting the Debtors with all legal matters, including, among others, all securities, corporate, real estate, tax, employee relations, general litigation, and bankruptcy legal work; and

h. performing all of the legal services for the Debtors which may be necessary or desirable herein; and

i. rendering such opinion letters as may be required of Debtors' counsel pursuant to a Court-approved debtor in possession financing or other agreement.

Compensation

15. Section 328(a) of the Bankruptcy Code permits the employment of a professional "on any reasonable terms and conditions of employment, including on a retainer." 11 U.S.C. § 328(a). The Debtors desire to employ WT&P under a general retainer because of the extensive legal services required, the cost of which cannot be estimated.

16. WT&P has received from the Debtors the sum of \$150,000.00 as a retainer toward the services rendered and expenses incurred through the filing of the chapter 11 cases, as set forth more fully in the Disclosure of Compensation filed contemporaneously with this Application. WT&P has drawn down on this retainer prior to the filing of the bankruptcy petitions for services associated with preparing for these chapter 11 cases.

17. Subject to this Court's approval and in accordance with 11 U.S.C. §§ 330 and 331, the Federal Rules of Bankruptcy Procedure, and any rules or other procedures that may be fixed by this Court, the Debtors request that WT&P be compensated, on an hourly basis, for professional services rendered, plus reimbursement of actual and necessary expenses incurred by WT&P.

Connections with Parties in Interest

18. To the best of the Debtors' knowledge, WT&P has no connection with any of the Debtors, their creditors or any other party-in-interest in these cases, their respective attorneys or accountants, the United States Trustee, or any person employed in the office of the United States Trustee, except as described in the Verified Statement of Attorneys to be Employed by Debtors which is filed herewith.

No Adverse Interest

19. The Debtors submit that WT&P represents no interest adverse to the Debtors as debtors in possession or to the Debtors' estates in the matters upon which WT&P is to be engaged for the Debtors.

Disinterested Person

20. The Debtors further submit that WT&P is a "disinterested person" as that term is defined in section 101(14) of the Bankruptcy Code.

Best Interests of the Estates

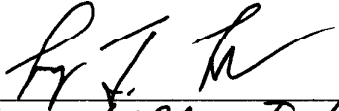
21. As set forth above, WT&P satisfies all the requirements for employment as attorneys for the Debtors under 11 U.S.C. § 327, as modified by 11 U.S.C. § 1107.

22. The employment of WT&P as attorneys for the Debtors is in the best interests of the Debtors' estates and is appropriate under 11 U.S.C. §§ 327 and 328.

Prayer for Relief

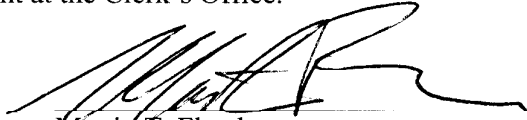
WHEREFORE, the Debtors respectfully request that they be authorized to employ WT&P under a general retainer to represent them in these cases and that they be granted such other and further relief as is just and proper.

FRANK'S NURSERY & CRAFTS, INC., et al.,
Debtors and Debtors in Possession

By: 
Print Name LARRY T. LAKIN
Title VICE CHAIRMAN & CFO

CERTIFICATE OF SERVICE

I certify that on this 19th day of February, 2001, copies of the foregoing Application, the Verified Statement of Attorneys to be Employed as Co-Counsel by Debtors and Debtors in Possession, the Disclosure of Compensation and a proposed Order, were sent by the means indicated and to the parties identified on the Omnibus Certificate of Service filed concurrently with these pleadings. In order to expedite the copying and transmittal of pleadings to parties in interest, a copy of the Omnibus Certificate of Service was not transmitted with the pleading. Any party desiring a copy of the Omnibus Certificate of Service may contact the undersigned or may review the original document at the Clerk's Office.


Martin T. Fletcher

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MARYLAND
(Baltimore Division)**

In re:

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INC., *et al.*,**

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Case No: 01-
(Chapter 11)

Debtor.

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(Jointly Administered)

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**VERIFIED STATEMENT OF ATTORNEYS TO BE
EMPLOYED BY DEBTORS AND DEBTORS IN POSSESSION**

Martin T. Fletcher and Whiteford, Taylor & Preston L.L.P., as the proposed attorneys of Frank's Nursery & Crafts, Inc., *et al.*, the debtors and debtors in possession herein (collectively, the "Debtors"), pursuant to 2014(a), respectfully represent:

1. I am a partner of Whiteford, Taylor & Preston, LLP ("WT&P"), Seven Saint Paul Street, Baltimore, Maryland 21202-1626, and have been duly admitted to practice law in the State of Maryland. This Statement is submitted in support of the Application for Authority to Employ Whiteford, Taylor & Preston, LLP as Attorneys for the Debtors and Debtors in Possession (the "Application").

2. Neither I, WT&P, nor any partner, counsel or associate thereof, insofar as I have been able to ascertain, has any interest adverse to Frank's Nursery & Crafts, Inc. or FNC Holdings, Inc. (collectively, the "Debtors").

3. WT&P is a "disinterested person" as that term is defined in section 101(14) of the Bankruptcy Code in that WT&P, its partners, counsel and associates:

(a) Are not creditors, equity security holders or insiders of any of the Debtors;

(b) Are not and were not investment bankers for any outstanding security of any of the Debtors;

(c) Have not been, within three (3) years before the date of the filing of the Debtors' Chapter 11 petitions, (i) investment bankers for a security of any of the Debtors or (ii) an attorney for such an investment banker in connection with the offer, sale or issuance of a security of any of the Debtors; and

(d) Are not and were not, within two (2) years before the date of the filing of Debtors' Chapter 11 petitions, a director, officer or employee of any of the Debtors or of any investment banker as specified in subparagraph (b) or (c) of this paragraph.

4. WT&P has no connection with any of the Debtors or their creditors, any other party-in-interest in their chapter 11 cases, their respective attorneys or accountants, the United States Trustee, or any person employed in the office of the United States Trustee, except as described as follows: WT&P represents certain unsecured creditors of the Debtors in matters unrelated to the Debtors or their bankruptcy cases, including Baltimore Gas & Electric Co., Potomac Electric Power Company, Perry Hall Square LLC and Mid Atlantic Realty Trust. Additionally, WT&P has a workers compensation and insurance defense practice through which various insurance companies may occasionally retain WT&P to defend insureds against third-party claims on matters unrelated to the Debtors or their bankruptcy proceedings, which insureds may happen to be unsecured creditors of one or more of the Debtors.

5. As with any bankruptcy case of the magnitude of the Debtors' cases, it is difficult to say with certainty that all material relationships have been discovered at the inception of the case. Accordingly, WT&P will periodically update its conflicts data base and if any new material relationships are discovered, they will be disclosed in a supplemental filing with the Court.

6. WT&P's principal attorneys and paralegals designated to represent the Debtors and their existing standard hourly rates chargeable to the Debtors range from \$145 to \$305. The paralegals likely to assist these attorneys bill at an hourly rate of \$115 per hour. The hourly rates set forth above are subject to periodic adjustments to reflect economic and other conditions. The hourly rates are currently slated to be reviewed for adjustment by WT&P following the end of the second calendar quarter 2001. Appropriate supplementation of the requisite disclosure will be presented at that time.

7. The hourly rates set forth above are WT&P's standard hourly rates for work of this nature. These rates are set at a level designed to fairly compensate WT&P for the work of its attorneys and paralegals and to cover fixed and routine overhead expenses. It is WT&P's policy to charge its clients in all areas of practice for all other expenses incurred in connection with their cases. The expenses charged to clients include, among other things, telephone and telecopier toll and other charges, mail and express mail charges, special or hand delivery charges, document processing, photocopying charges, charges for mailing supplies (including, without limitation, envelopes and labels) provided by WT&P to outside copying services for use in mass mailings, travel expenses, expenses for "working meals," computerized research and transcription costs, as well as non-ordinary overhead expenses such as secretarial and other overtime. WT&P will charge for these expenses in a manner and at rates consistent with charges made generally to WT&P's other clients. WT&P believes that it is fairer to charge these expenses to the clients incurring them than to increase its hourly rates and spread the expenses among all clients.

8. WT&P intends to represent the Debtors as co-bankruptcy counsel with the firm of Willkie Farr & Gallagher. WT&P, together with co-counsel and other professionals that


may be employed by the Debtors in these chapter 11 cases, and under the direction of the Debtors' management, will seek to provide professional services in the most efficient way possible and with a minimum of duplication.

9. No promises have been received by WT&P nor by any partner, counsel or associate thereof as to compensation in connection with these cases other than in accordance with the provisions of the Bankruptcy Code. WT&P has no agreement with any other entity to share with such entity any compensation received by WT&P in connection with these chapter 11 cases.

I, Martin T. Fletcher, one of the partners of Whiteford, Taylor & Preston L.L.P., declare under penalty of perjury that the forgoing is true and correct.

Dated: February 18, 2001.

WHITEFORD, TAYLOR & PRESTON L.L.P.

By: 
Martin T. Fletcher (Bar No. 07608)

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Case No: 01-
(Chapter 11)

Debtor.

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(Jointly Administered)

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DISCLOSURE OF COMPENSATION

Frank's Nursery & Crafts, Inc., *et al.*, the debtors and debtors in possession herein (collectively, the "Debtors"), have agreed, subject to this Court's approval, to retain Whiteford, Taylor & Preston L.L.P., ("WT&P") as co-counsel for the Debtors in these cases under a general retainer.

WT&P has received the sum of one hundred fifty thousand dollars (\$150,000) as a retainer toward services rendered and expenses incurred by WT&P in the preparation for and prosecution of these chapter 11 cases.

WT&P has drawn down on the \$150,000 retainer prior to the filing of the bankruptcy petitions.

WT&P's fees will be based upon the time spent and the customary hourly rates of WT&P in rendering professional services to the Debtors.

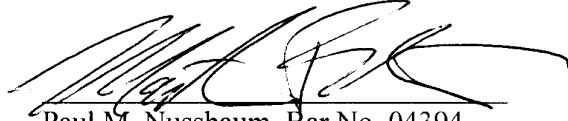
WT&P is also entitled to be reimbursed by the Debtors for any out-of-pocket expenses incurred by WT&P in connection with these cases. If the actual fee determined by WT&P is less than the amount previously paid, the balance will be returned to the Debtors. If the actual fee

determined by WT&P exceeds the amount paid, WT&P may request additional compensation to be paid out of the assets of the Debtors' estates.

WT&P has not shared or agreed to share any compensation received or to be received in these cases with any other person.

Dated: February 19, 2001

WHITEFORD, TAYLOR & PRESTON, L.L.P.

A handwritten signature in black ink, appearing to be 'Paul M. Nussbaum', written over a horizontal line.

Paul M. Nussbaum, Bar No. 04394
Martin T. Fletcher, Bar No. 07608
Seven St. Paul Street, Suite 1400
Baltimore, Maryland 21202-1626
(410) 347-8700

Co-Counsel for the Debtors,
Frank's Nursery & Crafts, Inc., *et al.*

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